

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SAMUEL M. ROBERTS,

Plaintiff,

-vs-

LOS ALAMOS NATIONAL SECURITY, LLC,
AWE, PLC, and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Civil Case No.: 11-cv-6206(L)

Defendants,
Third-Party Plaintiffs,

-vs-

UNIVERSITY OF ROCHESTER,

Third-Party Defendant.

**UNIVERSITY OF ROCHESTER'S STATEMENT OF UNDISPUTED MATERIAL FACTS
MADE PURSUANT TO LOCAL RULE 56**

WARD GREENBERG HELLER & REIDY LLP
300 State Street
Rochester, New York 14614
(585) 454-0700

*Attorneys for Third-Party Defendant
University of Rochester*

Pursuant to Local Rule 56 of the Rules of Civil Procedure for the United States District Court for the Western District of New York, Third-Party Defendant University of Rochester (“University”) submits this statement of material facts as to which it contends there is no genuine issue to be tried:

	UNDISPUTED FACT	EVIDENTIARY SUPPORT
1.	The University owns and operates the Laboratory for Laser Energetics (“LLE”), which contains the Omega Laser Facility (“Omega Facility”).	Morse Aff. ¶ 3.
2.	All experiments performed at the Omega Facility must be reviewed and approved by the FASC subcommittee, a group composed entirely of University employees.	Morse Aff. ¶ 12; Ex. 1.
3.	Decisions of the FASC subcommittee are ultimately appealable to the LLE Director, a University employee, who has final approval authority over all experiment proposals.	Morse Aff. ¶ 15.
4.	University employees are solely responsible for shot execution and data collection during the execution of all experiments and for control over the lasers and ancillary equipment during any maintenance periods.	Morse Aff. ¶¶ 18 – 25; Ex. 6.
5.	University employees operate and control all access to the Omega Facility.	Morse Aff. ¶ 3.
6.	The experiment under way at the time of plaintiff’s injury on August 6, 2012 was proposed by Dr. Hans Herrmann, an employee of defendant Los Alamos National Security, LLC.	Morse Aff. ¶¶ 18 – 19; Ex. 3.
7.	Dr. Herrmann’s proposal included a request to use a neutron diagnostic instrument called the High Yield Neutron Temporal Diagnostic (the “light pipe”).	Glebov Aff. ¶¶ 17 – 19; Ex. 5, 13.

8.	Dr. Herrmann's proposal was reviewed and approved by the FASC subcommittee. In addition, his request to use the light pipe was reviewed and approved by Dr. Vladimir Glebov, a University employee.	Morse Aff. ¶ 20; Glebov Aff. ¶ 20; Ex. 4.
9.	None of the defendants participated in the review or approval of Dr. Herrmann's proposal or his request to use the light pipe.	Morse Aff. ¶ 20; Glebov. Aff. ¶ 20.
10.	The light pipe was designed, built, installed, operated and maintained by University employees, and underwent a design review process in which only University employees participated.	Glebov Aff. ¶¶ 2, 9 – 15; Ex. 8 – 12.
11.	Defendants did not design, construct, install operate or perform any maintenance on the light pipe.	Glebov Aff. ¶ 16; Ex. 14, Interrogs. 8, 10; Ex. 15, Interrog. 10.
12.	At the time plaintiff was injured, he was employed by the University as a Senior Laboratory Engineer at the LLE.	Glebov Aff. ¶ 10.
13.	As plaintiff's employer, the University paid his salary and benefits, had exclusive control over his work activities, and had the exclusive right to terminate his employment.	Morse Aff. ¶ 27.
14.	Defendants did not employ plaintiff, did not pay his salary and had no authority to control his work activities or to terminate his employment.	Morse Aff. ¶ 27.
15.	On August 6, 2012, Dr. Vladimir Glebov, a University employee, instructed plaintiff to change the CO ₂ pressure on the light pipe.	Glebov Aff. ¶ 21; Dkt. 8 ¶ 16.
16.	Plaintiff sought and received permission from University employees before entering the target bay on August 6, 2012 to adjust the CO ₂ pressure on the light pipe.	Glebov Aff. ¶ 21.
17.	At no time on August 6, 2012 did defendants instruct plaintiff to enter the target bay or to make any changes to the light pipe.	Glebov Aff. ¶¶ 21 – 22.

Dated: August 30, 2012

WARD GREENBERG HELLER & REIDY LLP

By: _____ s/ Eric J. Ward

Eric J. Ward (eward@wardgreenberg.com)
Heidi S. Martinez (hmartinez@wardgreenberg.com)
William R. Leinen (wleinen@wardgreenberg.com)
300 State Street
Rochester, New York 14614

*Attorneys for Third-Party Defendant
University of Rochester*